

REMARKS

In response to the May 3, 2004 Restriction Requirement, Applicants elect Group II, claims 5-14, 39 and 42, drawn to an isolated nucleic acid, a vector comprising said nucleic acid, a cell, a pharmaceutical composition comprising the nucleic acid, and a kit, classified in class 536, subclass 23.1. Further, Applicants select SEQ ID NO: 1, encoding the polypeptide SEQ ID NO: 2, with traverse.

Applicants traverse the restriction requirement. The claims of Group II are drawn to nucleic acids. The claims of Group V are drawn to a method of determining the presence or amount of the nucleic acid of Group II. Applicants submit that these two groups of claims are not distinct because by detecting (claims of Group V) the nucleic acid (claims of Group II), Group V becomes part of Group II. In addition, Applicant believes that a search of SEQ ID NO: 1, which encodes the polypeptide SEQ ID NO: 2, would encompass any references useful in the examination of both groups. Therefore, joinder of Groups II and V would not present a serious burden for the Examiner.

The M.P.E.P. §803.02 (Eighth Edition, August 2001, revised February 2003) states:

If the search and examination of an entire application can be made without serious search burden, the Examiner must examine it on the merit, even though it includes claims to independent and distinct inventions.


Therefore, Applicants submit that according to M.P.E.P. §803.02, claims to groups II and V should be examined together because the search and examination of these claims would not unduly burden the examiner.

Upon entry of this amendment, claims 5, 6, 9, 12 – 14, 19 – 21, 39 and 42 will be pending. Claims 1 – 4, 15 – 18, 22 – 38, 40, 41 and 43 - 50 have been canceled without prejudice or disclaimer as drawn to non- elected subject matter. Elected claims 7, 8, 10 and 11 have been canceled. Applicant reserves the right to pursue the subject matter of canceled claims in a later application. Claims 5, 6, 9, 12, 14, 39 and 42 have been amended. No new matter is presented in this amendment.

CONCLUSION

Applicants respectfully request that the amendments and remarks made herein be entered and made of record in the file history of the present application. Applicants respectfully submit that this paper is fully responsive to the Restriction Requirement of June 1, 2004, and that the pending claims are in condition for allowance. Such action is respectfully requested. If there are any questions regarding these amendments and remarks, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,

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